

Amendment to the TSCA Section 5 Enforcement Response Policy  
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MEMORANDUM

June 8, 1989

SUBJECT: Amendment to the TSCA Section 5 Enforcement Response Policy

FROM: /s/ John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

TO: Addressees

This memorandum amends the TSCA Section 5 Enforcement Response Policy by revising the penalty for falsification of a Notice of Commencement ( NOC ). This change would apply to those instances where a company has submitted a Notice of Commencement in anticipation of production or importation, the event does not occur, and the company never does produce or import the substance.

This change has been made in response to numerous comments that the policy issued on August 5, 1988, created a large inequity in penalty when a company submits a Notice of Commencement but does not produce a substance, as compared to a company that produces a substance without submitting a Notice of Commencement. In the first situation, the current ERP requires that the violation be charged as a false NOC and would subject the violator to per day penalties from the day the false NOC was submitted to the day of discovery of the violation with the potential of very large penalties. The provision to allow for per day penalties for each calendar day a falsification occurs, was created for those situations where the falsification prevents the Agency from making a reasoned evaluation of the chemical substance. This is not the case for a false NOC. The chemical has been reviewed and mistakenly placed on the Inventory. A reasoned evaluation of the chemical substance has been made.

Attached are the two pages affected by the change with the necessary

revisions incorporated. These pages may be inserted into the TSCA Section 5 ERP in the appropriate places. If you have any questions concerning the revisions please contact David Stangel of my staff at 382-3477.

#### Attachments

#### ADDRESSEES

Mike Shapiro	(TS-788)
Charles Elkins	(TS-792)
Frederick F. Stiehl	(LE-134)
Mark Greenwood	(LE-132A)
A.E. Conroy II	(EN-342)
Diane Beal	(EN-342)
John J. Neylan III	(EN-342)
Mike Wood	(EN-342)
David Dull	(EN-342)
Jerry Stubbs	(EN-342)
Phyllis Flaherty	(EH-342)
Bob Zisa	(EH-342)
Sherry Sterling	(EH-342)
Maureen Lydon	(EH-342)
Ken Kanagalingam	(EH-342)
Jan Bearden	(EH-342)

Jake MacKenzie  
Western Regional Compliance Director  
Dean Hill, NEIC

I	Louis F. Gitto, Director Air Management	Marvin Rosenstein, Chief Pesticide & Toxic Subs Br
II	Barbara Metzger, Director Environmental Services Div.	Ernest Regna, Chief Pesticides & Toxic Subs. Br
III	Thomas C. Voltaggio Acting Director Hazardous Waste Management Division	Larry Miller, Chief Toxic & Pesticides Branch
IV	Winston A. Smith, Director Air, Pest. & Toxic Mangt. Division	Richard DuBose, Chief Pesticides & Toxic Subs. Br

V	William H. Sanders III, Dir Environmental Services Div	Phyllis Reed, Chief Pesticides & Toxic Subs Br
VI	William B. Hathaway, Dir Air, Pesticides & Toxic Subs.	Robert Murphy, Chief Pesticides & Toxic Subs. Br
VII	William a. Spratlin, Dir Air and Toxic Division	Carl Walters, Acting Chief Pesticides & Toxic Subs. Br
VIII	Irwin L. Dickstein, Director Air and Toxic Division	Alvin Yorke, Chief Toxic Substances Br

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IX	David P. Howekamp, Director Air Management Division	Davis Bernstein, Chief Pesticides & Toxic Subs. Br
X	Gary O'Neal, Director Air and Toxic Division	Kenneth Feigner, Chief Pesticides & Toxic Subs. Br

cc: Michael Walker (LE-134P)  
Jim Willis (TS-788)  
Alicia Tenuta (A-107)

AMENDED  
TSCA SECTION 5  
ENFORCEMENT RESPONSE POLICY  
OFFICE OF COMPLIANCE MONITORING  
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES  
THE U. S. ENVIRONMENTAL PROTECTION AGENCY

-9- Amended

Failure to submit a PMN for a chemical substance which would meet all requirements for a polymer exemption under 40 CFR 723.250, except that the company did not file for an exemption, will be assessed as a level 5 violation, per day.

Failure to submit a PMN for a chemical substance which would meet all requirements for a polymer exemption under 40 CFR 723.250, except that the company did not file for an exemption and the substance was further processed for commercial use, distributed to consumers, or released uncontrolled into the environment will be assessed as a level 4 violation, per-day.

Failure to submit a Notice of Commencement is a level 3 violation, one-day.

Failure to submit a timely Notice of Commencement ( early or late submission, up to 30 days prior to manufacture or 30 to 60 days after manufacture ) is a level 6 violation, one-day.

Failure to submit a timely Notice of Commencement ( early or late submission, more than 30 days prior to manufacture or more than 60 days after manufacture ) is a level 4 violation, one-day.

Withholding information or submitting false or misleading information with regard to a PMN, Significant New Use Notice, or exemption request is a level 1 violation, per-day.

Submission of a false Notice of Commencement is a level 1 violation, one- day.

Noncompliance of a false Notice of Commencement is a level 1 violation, one- day.

Noncompliance with TSCA Section 5(e) or 5(f) Orders, Rules or Injunctions and Significant New Use Rules

Violation of on-site restrictions is a level 2 violation, per-day.

Violation of off-site restrictions where the substance was either processed by another firm or distributed to consumers or released uncontrolled into the environment is a level 1 violation, per-day.

Failure to submit a Significant New Use Notice when the substance was not distributed is a level 2 violation, per-day.

Failure to submit a Significant New Use Notice when the substance was distributed to consumers is a level 1 violation, per-day.

Violation of production ban or restriction is a level 1 violation, per-day.

Failure to generate reports as required is a level 2 violation, per-day.

VIOLATION  
NATURE

LEVEL  
PER-DAY /  
ONE-DAY

Failure to submit a timely Notice of Commencement ( early or late submission, up to 30 days prior to manufacture or 30 HA to 60 days after manufacture ).	6	One-day
Failure to submit a timely Notice of Commencement ( early or late submission, HA more than 30 days prior to manufacture or more than 60 days after manufacture ).	4	One-day
Withholding information or submitting false or misleading information with regard to a HA PMN, Significant New Use Notice, or exemption request.	1	Per-day
Submission of a false Notice of Commencement. HA Noncompliance with TSCA Section 5(e) of 5(f) Orders, Rules or Injunctions and Significant Use Rules	1	One-day
Violation of on-site restrictions. CC	2	Per-day
Violation of off-site restrictions where the substance was either processed by another firm or distributed to consumers CC or released uncontrolled into the environment.	1	Per-day
Failure to submit a Significant New Use CC Notice when the substance was not distributed.	2	Per-day
Failure to submit a Significant New Use CC Notice when the substance was distributed to consumers.	1	Per-day
Violation of production ban or restriction. CC	1	Per-day
Failure to generate reports as required. HA	2	Per-day